

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

ROY LASSITER, JENNIFER
PURIFOY,

Plaintiffs,

V.

PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, UNITED HEALTHCARE SERVICES, INC., as successor in interest to PacifiCare Life & Health Company; ROBERT D. BELL and Fictitious Defendants “A” through “R”,

Defendants.

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CIVIL ACTION NO. 2:07-CV-00583

**DEFENDANTS PACIFICARE LIFE AND HEALTH INSURANCE COMPANY  
AND UNITED HEALTHCARE SERVICES, INC.'S  
RESPONSE TO PLAINTIFFS' MOTION TO REMAND**

COME NOW Defendants PacifiCare Life and Health Insurance Company and United HealthCare Services, Inc., (together, “PacifiCare”), through counsel, and file this Response to Plaintiffs’ Motion to Remand:

## 1.

1.1 On June 25, 2007, PacifiCare properly removed this action from the Circuit Court of Bullock County, Alabama pursuant to 28 U.S.C. § 1331 because Plaintiffs' claims herein all raise substantial questions of federal law and/or arise under the federal Medicare Act, 42 U.S.C. 1395w-21 – w-28, as amended by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 ("MMA"), and, accordingly, are completely preempted by federal law.

1.2 On July 17, 2007, Plaintiffs filed a Motion to Remand complaining that PacifiCare's removal was improper. Plaintiffs' primary contention is that PacifiCare has

not met its burden of demonstrating a substantial question of federal law or complete preemption under the Medicare Act necessary to establish federal subject matter jurisdiction. (Motion at ¶ 4). To support its allegation, Plaintiffs attempt to argue that Medicare statutory provisions do not provide for “complete preemption,” relying on excerpts from federal case law and the Federal Register. (Motion at ¶¶ 5-6). Despite their contentions, Plaintiffs’ arguments for remand wholly fail, as PacifiCare demonstrates in its accompanying Memorandum of Law. Not only do Plaintiffs’ claims necessarily raise substantial questions of federal law directly governed by the Medicare Act’s statutory and regulatory framework, but federal preemption exists as to all of Plaintiffs’ claims. To the extent that any state law claims survive, this Court should exercise supplemental or pendent jurisdiction over them.

WHEREFORE, PacifiCare Life and Health Insurance Company and United HealthCare Services, Inc. respectfully request that the Court deny Plaintiffs’ Motion to Remand, and for any other relief to which it is entitled.

DATED: July 30, 2007.

Respectfully submitted,

s/ William C. McGowin

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HEALTHCARE SERVICES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert G. Methvin, Jr.  
J. Matthew Stephens  
Rodney E. Miller  
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*Attorney for Plaintiffs*

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Robert D. Bell  
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s/ William C. McGowin  
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Of Counsel